IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.639 OF 2006

Milind Vaman Khanolkar & Ors. .. Petitioners.

Versus

State of Maharashtra & Ors. .. Respondents.

Ms.Neeta Karnik for the petitioners.

Shri.A.H.Palekar, A.G.P. for the respondents.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 9TH FEBRUARY, 2007.

P.C.:

1. Heard Ms.Karnik appearing for the petitioners and Shri.Palekar, A.G.P. appearing for the respondents. The petition challenges an order passed under the Urban Land (Ceiling and Regulation) Act, 1976.

2. The grievance of the petitioners is that they are lawful owners and in occupation so also possession of agricultural lands more particularly described in Para 1 of this petition. They claim these lands to be ancesteral

properties.

3. It appears that these lands came within the Urban Agglomeration and, therefore, the ULC Act was made applicable to the same. Once the ULC Act was made applicable, naturally, the limits (ceiling limits) prescribed therein would also apply. Consequently, the holder would not be in a position to hold and possess lands exceeding the ceiling limits, unless the same is permitted in the manner provided by the ULC Act.

4. The enactment postulates that holders should disclose the properties, within the Urban Agglomeration Act, in their ownership and possession. Such disclosure is made in writing and that is termed as statement. The statement, when presented to the competent authority, is scrutinised on the basis of which further proceedings follow. A draft statement has to be forwarded by the authorities to the affected persons in the manner prescribed by law.

5. The grievance is that the proceedings under the ULC Act have been finalised without the petitioners having notice of the same and on an erroneous ground that they were represented by one Prakash Balkrishna Khanolkar.

6. Ms.Karnik, appearing for the petitioners states that there is a serious dispute as to whether the said Prakash Balkrishna Khanolkar was representing the family at the relevant time. That apart, she makes a grievance that the petitioners had no notice of the proceedings at all. The draft statement was finalised and thereafter further proceedings under the Act were taken in their absence. Their appeals have also been dismissed. Minister/state govt. refuses to exercise its revisional jurisdiction because in their opinion, the matter has been finalised after successive appeals and now cannot be reopened. The proceedings at the instance of the present petitioners are highly belated and hopelessly time barred.

7. Ms.Karnik states that the petitioners had no opportunity of whatsoever nature to satisfy the authorities that there is sufficient cause for condoning the delay so also on merits, they have raised several arguable issues.

8. This Court by an order passed on this petition on 28th February, 2006 directed the petitioner to annex a complete copy of the statement u/s.6 of the ULC Act. Ms.Karnik points out that compliance with the direction is

duly made. A copy of the statement u/s.6 has been annexed. She submits that, all that the petitioners seek today, is an opportunity by going back to the authorities and satisfy them that sufficient cause is made out for condoning the delay so also for hearing them with regard to their objections. She submits that such an opportunity should be granted in the peculiar facts and circumstances of this case. More so, when an ad-interim order of status-quo has been operating for more than a year.

9. The learned A.G.P. has invited my attention to the affidavit in reply and more particularly para 3 and 4 thereof. He submits that this is an attempt to reopen concluded matters in as much as the lands now stand acquired and duly vested in the state govt. He has also invited my attention to para 6 of the affidavit in reply in this behalf. In any event, he submits that there is no explanation for the gross delay.

10. Having perused the petition and the annexures thereto so also the affidavit in reply, in my view, in the peculiar facts of this case, it would be better if an opportunity is given to the petitioners to approach the authorities requesting, firstly, that sufficient cause is made out for condoning the delay in filing the appeals and

if the authorities are satisfied with regard to the same, then, at a subsequent stage place the merits of their case. Thus, it would be open for the petitioners to approach the appellate authority invoking its appellate jurisdiction by filing an appeal and an application for condonation of delay and if such an appeal/application is filed within a period of eight weeks from today, the appellate authority to consider the same and pass appropriate orders thereon within a period of six weeks from the date of receipt of such application. Ms.Karnik states that the petitioners would file an application for condonation of delay within a period of two weeks from today and shall remain present before the appellate authority on such dates as are fixed for the hearing of the same. They would not seek adjournment and cooperate in the expeditious disposal of the application seeking condonation of delay.

11. The merits of the matter not be gone into unless and until the petitioners satisfy the authorities that the delay needs to be condoned and sufficient cause is made out in that behalf. Further, needless to add that if the appellate authority condones the delay, it shall decide the matter on merits expeditiously thereafter.

12. All contentions of both sides in so far as the condonation of delay as also merits are expressly kept open and no opinion is expressed by this Court thereon.

13. This Court has passed the present order in the peculiar facts of this case and only because the petitioners have disputed receipt of notice from the authorities before finalisation of the statement. This order would not be treated as precedent in other case.

14. Ad-interim order granted by this Court to continue for a period of eight weeks from today. Needless to state that if the application for condonation of delay is not filed within this period, ad-interim order to stand vacated without any further reference to this Court.

15. No order as to costs.

16. All concerned to act upon an authenticated copy of this order.

sd/-

(S.C.Dharmadhikari, J.)